



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 February 2013**

**17600/12  
ADD 1**

<b>PV CONS</b>	<b>69</b>
<b>COMPET</b>	<b>770</b>
<b>RECH</b>	<b>463</b>
<b>ESPACE</b>	<b>63</b>

**ADDENDUM to DRAFT MINUTES**

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Subject: **3208th** MEETING OF THE COUNCIL OF THE EUROPEAN UNION  
"COMPETITIVENESS" (Internal market, Industry, Research and Space)  
held in Brussels on 10 and 11 December 2012

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## **PUBLIC DELIBERATION ITEMS**<sup>1</sup>

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### **AGENDA ITEMS (doc. 17171/12 OJ/CONS 68 COMPET 749 RECH 451 ESPACE 60)**

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<sup>1</sup> Deliberations on Union legislative acts (Article 16(8) of the Treaty on European Union), other deliberations open to the public and public debates (Article 8 of the Council's Rules of Procedure).

## **LEGISLATIVE DELIBERATIONS**

*(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)*

### **5. Amended proposal for a Regulation of the European Parliament and of the Council establishing an Action Programme for Customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision No 624/2007/EC [First reading]**

Interinstitutional file: 2011/0341a (COD)

- Partial general approach  
13265/12 UD 221 AELE 61  
+ COR 1  
17005/12 UD 317 AELE 92 CODEC 2926  
17298/12 UD 319 AELE 91 CODEC 2921  
+ ADD 1  
+ ADD 2

The Council adopted a partial general approach to the text of a Regulation of the European Parliament and of the Council establishing an Action Programme for Customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision No 624/2007/EC, as laid down in doc. 17005/12 and agreed to enter in the Council minutes the statements contained in the annex and laid down in doc. 17298/12 ADD 1 + ADD 2.

### **Statement by the Council**

"Effective, efficient, modern and harmonised approaches to customs controls at the external border of the EU are essential:

- to protect the financial interests of the Union and its Member States;
- to fight against illegal trade while allowing facilitations for legitimate business activity;
- to ensure the safety and security of the Union and its inhabitants, and the protection of the environment;
- to protect intellectual property rights, and
- to secure compliance with the common commercial policy.

In order to exercise such controls, it is crucial for customs to have access to the appropriate tools, such as detection equipment and technology. The need for these tools is exemplified, amongst others, in the 2011 Europol's Organized Crime Threat Assessment Report, which states that the economic impact of cigarette smuggling represents a loss to budgets of the Member States and of the Union estimated at around 10 billion Euros per year.

At present, the several instruments of the Multiannual Financial Framework (MFF) available to co-fund the acquisition of such tools are not exploited to the fullest extent. To achieve efficient allocation of funding resources, the Council invites the Commission to present a report, no later than mid-2018, on the provision of the necessary financial resources to purchase appropriate tools for customs controls in the area referred to in Art. 3(a) of the TFEU, including the possibility of allocating these resources through a single fund."

### **Statement by the Council and the Commission**

"This Regulation cannot be interpreted as including or conferring any powers or obligations which fall under Title V of Part III of the Treaty on the Functioning of the European Union."

**6. Proposal for a Regulation of the European Parliament and of the Council laying down Union Customs Code (Recast) [First reading]**

Interinstitutional file: 2012/0027 (COD)

- Orientation debate

6784/12 UD 49 ENFOCUSTOM 10 MI 120 COMER 36 TRANS 53

CODEC 450

17297/12 UD 318 ENFOCUSTOM 138 MI 807 COMER 256 TRANS 451

CODEC 2920

The Council held an orientation debate on a Proposal for a Regulation of the European Parliament and of the Council laying down Union Customs Code (Recast).

**7. (a) Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection [First reading]**

Interinstitutional file: 2011/0093 (COD)

**(b) Proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements**

Interinstitutional file: 2011/0094 (CNS)

**(c) International Agreement on the Unified Patent Court**

- Presidency report on state of play and endorsement of the final package

9224/11 PI 31 CODEC 671

9226/11 PI 32

16749/12 PI 153 CODEC 2807 COUR 80

The Council was debriefed by the Presidency on the latest state of play in the discussions concerning the patents package and gave its political endorsement to the overall deal reached with the European Parliament on this package, subject to the necessary legal linguistic revision of the final texts. The Council took note of the statement made by the German delegation hereafter.

### **Statement by Germany**

"DE interprets the principles concerning proof as contained in Article 33a of the Agreement as meaning that farmers who have not planted seeds or planting stock which are subject to patent protection generally cannot be held liable for any patented biological material whose presence is adventitious or technically unavoidable."

## 9. Public Procurement Package [First reading]

(a) **Proposal for a Directive of the European Parliament and of the Council on public procurement**

Interinstitutional file: 2011/0438 (COD)

18966/11 MAP 10 MI 686

16725/1/12 MAP 70 MI 772 CODEC 2794 REV 1

16726/12 MAP 71 MI 773 CODEC 2796

(b) **Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors**

Interinstitutional file: 2011/0439 (COD)

18964/11 MAP 9 MI 685

16727/12 MAP 72 MI 774 CODEC 2797

16729/12 MAP 73 MI 775 CODEC 2798

(c) **Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts**

Interinstitutional file: 2011/0437 (COD)

18960/11 MAP 8 MI 684

+ REV 1 (sv)

16730/12 MAP 74 MI 776 CODEC 2799

16731/12 MAP 75 MI 777 CODEC 2800

- General approach

The Council unanimously adopted a general approach on the three proposals:

- a) on proposal for a Directive on public procurement without modifications;
- b) on proposal for a Directive on procurement by entities operating in the water, energy, transport and postal services sectors, as with modifications laid down in doc. 18011/12 and
- c) on proposal for a Directive on the award of concession contracts, as with modifications laid down in doc. 18007/12.

The Council and the Austrian delegation asked for statements to be annexed to the Council minutes. These statements are reproduced hereafter.

### **Statement by the Council**

#### **(b) Proposal for a Directive of the European Parliament and of the Council on procurement by entities operation in the water, energy, transport and postal services sectors - Articles 79a, 79b**

"Having regard to different positions of Member States on provisions governing relations with third countries in the context of public procurement and having regard to the ongoing discussion of the Commissions proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries ("Third country instrument") it is appropriate to maintain for an interim period the status quo of the regime which is currently applicable to the utilities sector pursuant to Articles 58 and 59 of Directive 2004/17/EC. Consequently, and in order not to prejudge the examination of the Third country instrument, the Council is of the opinion that the scope and the procedure of the current provisions should remain unchanged."

### **Statement from Austria**

#### **Article 10 (da) Classical Directive, Article 19 (ca) Utilities Directive and Article 8 para. 7 (da) Concession Directive**

"Following the negotiations in the Council Working Group on Procurement and the therein agreed understanding to exclude all financial services to raise money or capital from the scope of the Directive, Austria would like to underline its understanding, that the term "loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments" in Art. 10 (da) of the classical Directive, Art. 19 (ca) of the Utilities Directive and Art. 8 para. 7 (da) of the Concession Directive is to be interpreted broadly in the sense as to cover all financial services to raise money or capital such as loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments."

#### **10. Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System [First reading]**

Interinstitutional file: 2011/0435 (COD)

- Progress report

18899/11 ETS 22 MI 679 COMPET 629 EDUC 297 CODEC 2507

16293/12 ETS 28 MI 737 COMPET 697 EDUC 346 CODEC 2693

The Council took note of the progress report, prepared by the Presidency, as set out in doc. 16293/12.

## 14. Horizon 2020 [First reading]

### (a) **Proposal for a Council Decision establishing the Specific Programme Horizon 2020 – The Framework Programme for Research and Innovation (2014-2020)**

Interinstitutional file: 2011/0402 (CNS)

#### - Partial general approach

17935/11 RECH 412 COMPET 580 IND 163 MI 632 EDUC 284

TELECOM 198 ENER 390 ENV 920 REGIO 144 AGRI 827

TRANS 343 SAN 261

17029/12 RECH 447 COMPET 744 IND 215 MI 795 EDUC 364 TELECOM 235

ENER 507 ENV 908 REGIO 147 AGRI 823 TRANS 434 SAN 308

The Council reached a partial general approach as set out in doc. 17633/12. The German delegation and the Commission asked for statements to be annexed to the Council minutes. These statements are reproduced hereafter.

### **Statement by Germany**

#### **Stem cell research in the specific programme Horizon 2020**

"The Federal Republic of Germany agrees with the partial general approach for the specific programme implementing Horizon 2020.

With its partial general approach of 31.05.2012 on the Horizon 2020 Regulation, the Competitiveness Council achieved a high level of legal certainty for the ethical principles of the framework programme, particularly as, in comparison with the 7th research framework programme, the decision takes the form of a legal act. Nevertheless, the Federal Republic of Germany considers it useful to include the ethical principles referred to in Article 16 of the Regulation in the specific programme. These principles would contribute not only to the visibility of the ethical orientation of the specific programme, but also to its implementation and the responsibilities of the programme committees. The specific programme should also contain ethical rules that are comprehensible in themselves, without any knowledge of the Horizon 2020 Regulation. Since the Council's Legal Service and the Commission have made it clear that the ethical framework conditions in the Regulation are legally binding for the whole Horizon 2020 framework programme, and thus also apply to the specific programme, there are overarching reasons why the Federal Republic of Germany can agree with the present text of the partial general approach of the specific programme.

## **Statements by the Commission**

### **Reserves in the Specific Programme implementing Horizon 2020**

"The Commission fully reserves its position on the entire compromise proposal. Its reserves pertain in particular to: the provision concerning delegated acts for access to finance (Article 3.2); the deletion of the provision for delegated acts for indicators (Article 3.5 and Article 10); Committee opinion on the ERC work programme by advisory procedure (Article 5 and Article 9.2a and 9.3); the inclusion of a Committee opinion for project selection decisions and terms of reference for the programme's evaluators (Article 5.7); the information to be provided to the Committee on the programme's implementation and early involvement of the Committee in the preparation of the work programmes (Article 8a.2; Annex I - Part I, ERC, point 1.3 and Annex IV); the inclusion of a provision on the Committee meeting in configurations and introduction of an Annex with a list of them (Article 9.1.a and Annex V); the level of details included in Annex III; the reference to ERAC, as well as other ERA-related Groups and the EPG (Annex I, 1.1); the opening-up for loans below the threshold of EUR 150.000 (Annex I, Part II, 2.1); the addition in the box on KETs for larger-scale pilot line and demonstrator projects "to be implemented in various environments and conditions" (Annex I, Part II, 1.); the reference to "efficient and flexible fossil power plants (including those using natural gas)" and to the proposed "support will also be given to clean coal technologies as technologies complementary to CCS" (Challenge 3, section 3.2); the reference to "unconventional gas and oil resources exploitation and productions" (Challenge 3, section 3.5); the reference to GMES (Challenge 5, section 5.5); a new activity line on cultural heritage (Challenge 5, section 5.6); the extension of scope of teaming (Challenge 6, section 6.1.4); the split of Challenge 6 into two Challenges; the need to include a reference to the "ICT and service industries" (Challenge 7, section 7); the deletion of the explicit reference to "civil and military applications" (Challenge 7, section 7.8), and the deletion of the reference to ENISA (Challenge 7, section 7.8)."

### **Impact of comitology on the time-to-grant**

"The Commission regrets that the Council has re-introduced comitology for the selection of certain individual projects in the Partial General Approach on the Specific programme implementing Horizon 2020 and draws the attention that this entails negative consequences, as it will unnecessarily prolong the time-to-grant and increase the administrative burden.

This will go against the core objective of simplification for the benefit of participants which the Commission pursues with its proposal for the Horizon 2020 legislative package, and will jeopardize respecting the maximum average time to grant of 9 months set out in the new Financial Regulation (Art 188.2)."



(b) **Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 – The Framework Programme for Research and Innovation**

Interinstitutional file: 2011/0400 (NLE)

- Progress report  
17936/11 RECH 413 COMPET 581 ATO 152  
+ COR 1  
16578/12 RECH 429 COMPET 720 ATO 160

The Council took note of the Progress Report as set out in doc. 16578/12.

**15. Proposal for a Decision of the European Parliament and of the Council on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT): the contribution of the EIT to a more innovative Europe [First reading]**

Interinstitutional file: 2011/0387 (COD)

- Partial general approach  
18091/11 RECH 419 COMPET 589 EDUC 286 CODEC 2306  
17028/12 RECH 446 COMPET 743 EDUC 363 CODEC 2868

The Council reached a partial general approach as set out in doc. 17621/12. The Spanish and the Belgian delegations, as well as the Commission asked for statements to be annexed to the Council minutes. These statements are reproduced hereafter.

**Statement by Spain and Belgium**

"Spain wishes to underline its support to the Partial General Approach reached on the Strategic Innovation Agenda of the EIT, although it should not preempt the necessary discussions which should take place as regards the KICs themes for 2014, once an agreement is reached on the MFF package. As stated by the Governing Board of the EIT and given the relevance of this sector in terms of employment, growth potential and competitiveness, the theme "added-value manufacturing" deserves urgent attention and the Council needs to give further consideration to its possible inclusion in the list of themes for 2014."

**Statement by the Commission**

"The Commission fully reserves its position on the partial general approach concerning the Strategic Innovation Agenda of the EIT in the light of on-going negotiations on the MFF. In particular, it reserves its position on the new Article 1a as it introduces an additional decision making process for the themes of the third wave of KICs, thereby substantially delaying their establishment, originally foreseen in the Commission's proposal for 2018."

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